

1 Martha L. Goodman (*pro hac vice*)
2 PAUL, WEISS, RIFKIND, WHARTON
2 & GARRISON LLP
3 2001 K Street, NW
3 Washington, DC 20006-1047
4 Telephone: (202) 223-7300
4 Facsimile (202) 223-7420
mgoodman@paulweiss.com

6 Karen L. Dunn (*pro hac vice* pending)
Jeannie S. Rhee (*pro hac vice*)
7 Jessica E. Phillips (*pro hac vice*)
DUNN ISAACSON RHEE LLP
401 Ninth Street, NW
8 Washington, DC 20004
Telephone: (202) 240-2900
9 kdunn@dirllp.com
jrhee@dirllp.com
10 jphillips@dirllp.com

11 Meredith R. Dearborn (SBN 268312)
12 PAUL, WEISS, RIFKIND, WHARTON
13 & GARRISON LLP
14 535 Mission Street, 24th Floor
15 San Francisco, California
16 Telephone: (202) 223-7323
17 Facsimile (202) 330-5908
18 mdearborn@paulweiss.com

Counsel for Defendant Google LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EPIC GAMES, INC.

Plaintiff,

VS.

SAMSUNG ELECTRONICS CO. LTD;
SAMSUNG ELECTRONICS AMERICA, INC.; and
GOOGLE LLC.

Defendants.

Case No. 3:24-cv-06843-JD

**GOOGLE LLC'S BRIEF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND THE
COMPLAINT**

Judge: Hon. James Donato

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INTRODUCTION

Plaintiff Epic Games seeks leave to amend its complaint and add gratuitous claims based entirely on a security feature that has existed for over a decade and was already litigated in *Epic Games Inc. v. Google LLC*, No. 3:20-cv-05671-JD: Google’s Unknown Sources installation flow. These new claims are not tethered to the core allegations in this case, an alleged agreement with Samsung regarding Auto Blocker. Epic’s request should be denied because the proposed First Amended Complaint (“FAC”) fails to allege a sufficient factual basis for the proposed claims. According to the FAC, Google is intentionally deploying the Unknown Sources installation flow—a security feature that Epic acknowledges has applied to all forms of direct downloading for the past decade—specifically to interfere with the Epic Games Store. *See* FAC ¶¶ 215, 227, 238. But the proposed FAC does not allege that Google made changes to the Unknown Sources install flow because of, or in order to interfere with, this launch. It is simply implausible that Google deployed the Unknown Sources install flow a decade ago to harm an app store that did not exist at the time. Epic’s proposed claims could not survive a motion to dismiss, amendment would be futile, and the Court should deny Epic’s motion to amend.

BACKGROUND

Epic filed its complaint against Samsung and Google on September 30, 2024, alleging that Samsung and Google conspired to turn Samsung’s Auto Blocker security feature on by default. Now, Epic seeks leave to amend its complaint to bring four additional claims unrelated to the alleged conspiracy, based instead on Google’s decade-old Unknown Sources installation flow.

Epic launched the Epic Games Store on Android on August 16, 2024—after the jury’s verdict in *Epic v. Google*. FAC ¶ 7. According to the proposed FAC, Google’s Unknown Sources installation flow, which featured in *Epic v. Google*, is intended to interfere with customers’ ability to download the since-launched Epic Games Store or apps within the Epic Games Store. FAC ¶ 10. Of course, the Unknown Sources install flow was well known to Epic at the commencement of the prior *Epic v. Google* litigation; it applied to Epic’s *Fortnite* launcher then. Unknown Sources thus featured heavily, and was litigated in, *Epic v. Google*. E.g., *Epic Games Inc. v. Google LLC*, No. 3:20-cv-05671-JD, ECF No. 341 at ¶¶ 129–32 (discussing and demonstrating

1 with pictures the steps to download *Fortnite* from Epic’s servers). Epic did not bring these claims
 2 then.

3 Here, Epic’s proposed FAC ties its new claims to the launch of the Epic Games Store.¹ The
 4 proposed FAC alleges that through the Unknown Sources install flow, Google “still” warns users
 5 that unknown apps “might be harmful.” FAC ¶¶ 10, 69. Epic further alleges that, in maintaining
 6 the Unknown Sources install flow as it has existed for the past decade, Google is intending to, and
 7 is, “discouraging existing and prospective customers from downloading the Epic Games Store on
 8 Android, as well as Epic apps and third-party apps offered on the Epic Games Store,” FAC ¶ 151,
 9 and that Google is “deterring developers from contracting with Epic to host their games on the
 10 Epic Games Store,” including because unnamed developers allegedly fear that the Epic Games
 11 Store may become “subject to significant frictions” once the injunction (which is currently stayed
 12 pending appeal) in *Epic v. Google* expires in three years, FAC ¶¶ 87, 152. Finally, the proposed
 13 FAC alleges that the warnings about unknown apps, which are built into the Unknown Sources
 14 install flow, are false as to the Epic Games Store and the apps within it. FAC ¶¶ 135–36.

15 Based on these allegations, Epic seeks to add a claim for tortious interference with its
 16 contractual relationships with consumers (proposed Count 10), predicated upon two contracts with
 17 unnamed existing users of the Epic Games Store and *Fortnite* on other platforms: (1) the Epic
 18 Games Store End User License Agreement and (2) the *Fortnite* End User License Agreements
 19 (collectively, “EULAs”). FAC ¶¶ 211–17. Epic further seeks to add a claim for tortious
 20 interference with Epic’s prospective economic relationships with consumers (proposed Count 12),
 21 FAC ¶¶ 223–27, and with developers (proposed Count 14), FAC ¶¶ 236–43. Finally, Epic seeks
 22 to add a claim for trade libel and commercial disparagement against Google (proposed Count 8).

23
 24
 25 ¹ Still, some allegations suggest Epic is seeking to relitigate issues or theories of their claims that
 26 could have and should have been brought in the prior litigation. See FAC ¶¶ 225–26 (claims
 27 related to “apps [downloaded] from Epic’s website”). Such theories or claims are subject to
 claim preclusion or the applicable statutes of limitation, Google will assert such defenses (and
 reserves all rights to do so) at the appropriate juncture.

LEGAL STANDARD

Whether to grant a plaintiff’s motion for leave to amend a complaint is left to the discretion of the trial court. *Waits v. Weller*, 653 F.2d 1288, 1290 (9th Cir. 1981). In deciding whether to grant leave, a court considers: (1) undue delay, (2) the movant’s bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party, and (5) futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); see also *Nevares v. San Jose Police Officers Flose*, 2025 WL 1266906, at *3 (N.D. Cal. May 1, 2025). All five factors need not be present for leave to be denied; “futility of amendment can, by itself, justify the denial of a motion for leave to amend.” *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).² The “legal sufficiency of a proposed amendment is identical to the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6).” *Miller v. Rykoff-Sexton*, 845 F.2d 209, 214 (9th Cir. 1988).³ On this posture, the Court must take Plaintiff’s allegations as true, but need not accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

ARGUMENT

I. The Proposed FAC Fails To State A Claim For Tortious Interference With Contractual Relationships.

Leave to amend to add a claim for tortious interference with contractual relations should be denied as futile. To state this claim, a plaintiff must plausibly allege five elements: “(1) a valid

² With respect to quoted material, unless otherwise indicated, all brackets, ellipses, footnote call numbers, internal quotations, and citations have been omitted for readability. All emphasis is added unless otherwise indicated.

³ Some courts in this District have noted that denial of leave to amend on futility grounds is “rare” and opt to “defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003). Other courts consider the merits on a motion to amend. E.g., *Red Hat, Inc. v. VirtaMove, Corp.*, 2025 WL 1159869, at *4-*6 (N.D. Cal. Apr. 21, 2025) (denying motion to amend based on futility). In the interest of efficiency, Google offers these arguments now for the Court’s earliest consideration. Google has no objection if the Court chooses to defer consideration of whether Epic has stated a claim “until after leave to amend is granted and the amended pleading is filed.” *Netbula*, 212 F.R.D. at 539.

1 contract between plaintiff and a third party; (2) defendant’s knowledge of this contract; (3)
 2 defendant’s intentional acts designed to induce a breach or disruption of the contractual
 3 relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting
 4 damage.” *3500 Sepulveda, LLC v. Macy’s W. Stores, Inc.*, 980 F.3d 1317, 1325–26 (9th Cir.
 5 2020). The proposed FAC fails to allege facts sufficient to establish any of these elements.

6 **A. Epic Cannot Allege Google Had The Required Intent To Disrupt Epic’s
 Contracts.**

7 Epic does not—because it cannot—allege facts showing that Google’s “specific purpose
 8 was to disrupt” the EULAs, or that Google knew interference with the EULAs was “a necessary
 9 consequence of” or “substantially certain to occur” as a result of the Unknown Sources install
 10 flow. *Nevada DeAnza Fam. LP v. Tesoro Refin. & Mktg. LLC*, 474 F. Supp. 3d 1087, 1095 (N.D.
 11 Cal. 2020).

12 As the proposed FAC admits, the Unknown Sources installation flow existed for “well
 13 over a decade” prior to the launch of the Epic Games Store on Android. FAC ¶ 65. It is
 14 implausible that Google could have intended to disrupt the EULAs, when according to the
 15 proposed FAC, Google implemented the Unknown Sources install flow (whose purpose is
 16 security-related: to protect against potentially “harmful” apps, according to the proposed FAC)
 17 more than ten years before the Epic Games Store even existed. *See id.* ¶¶ 65–68. Nor can Epic
 18 make any plausible allegation that the implementation and operation of the Unknown Sources
 19 install flow was intended to interfere with Epic’s contracts with customers based on the future,
 20 hypothetical launch of the Epic Games Store, which is fatal to Epic’s proposed new claim.

21 Epic’s conclusory allegation that the Unknown Sources install flow is “designed to and
 22 does” dissuade consumers is insufficient as a matter of law. FAC ¶ 215. In *Nevada DeAnza*
Family LP, the court dismissed a claim of tortious interference with contractual relationships
 23 where there existed “alternative business explanations” for the defendant’s conduct. 474 F. Supp.
 24 3d at 1095. Unknown Sources warns users of the security risks of direct downloading, FAC ¶ 68,
 25 a clear alternative business purpose entirely unrelated to the Epic Games Store or Epic’s EULAs.
 26 The lack of any facts alleging Google’s “specific purpose” to interfere, or “substantial certainty”
 27

1 of contractual interference, dooms this claim. *Vascular Imaging Pros., Inc. v. Digirad Corp.*, 401
 2 F. Supp. 3d 1005, 1011–12 (S.D. Cal. 2019) (dismissing complaint that is “devoid of any facts” in
 3 support of the plaintiff’s “bare allegations” that the defendant “intended to interfere with the
 4 contract”).

5 Because Epic fails to allege that Google had “anything more than generalized knowledge
 6 of any contractual relationships,” it “likewise fails to allege that” the defendant had the requisite
 7 intent to disrupt the contracts. *Trindade v. Reach Media Grp., LLC*, 2013 WL 3977034, at *16
 8 (N.D. Cal. July 31, 2013); *Davis v. Nadrich*, 174 Cal. App. 4th 1, 10–11 (2009) (defendant was
 9 not “sufficiently aware of the details” of that contract “to form an intent to harm it”). Indeed, Epic
 10 does not and cannot allege that Google has actual “knowledge of the contract with which [it] is
 11 interfering and of the fact that [it] is interfering with the performance of the contract.” *Jenni Rivera*
 12 *Enter., LLC v. Latin World Enter. Holdings, Inc.*, 36 Cal. App. 5th 766, 783 (2019) (citing
 13 Restatement (Second) of Torts § 766 cmt. i)). Epic alleges only that the EULAs “are public,” FAC
 14 ¶ 148, and that “Google knows of the contracts between Epic and its contracting customers,” *id.*
 15 ¶ 214. Because Epic does not allege “anything more than generalized knowledge of” the
 16 contractual relationship between Epic and its customers, the claim fails. *Trindade*, 2013 WL
 17 3977034, at *16 (granting dismissal where plaintiff alleged only “generalized knowledge” of
 18 plaintiff’s contracts with advertisers); *GSI Tech. v. United Memories, Inc.*, 2014 WL 1572358, at
 19 *7 (N.D. Cal. Apr. 18, 2014) (holding insufficient allegation the defendant knew of non-compete
 20 contract because “as an industry participant” the defendant “knows that non-competes are
 21 common”).

22 **B. Epic Cannot Allege Google’s Conduct Actually Interfered With Its Contracts
 23 Or Caused Particularized Damage.**

24 Epic has also failed to meet the other two elements: actual breach and particularized
 25 damage. While Epic “need not allege an actual or inevitable breach” of the EULAs, it must at
 26 least allege “interference with its performance” under the EULAs. *Pac. Gas & Elec. Co. v. Bear*
 27 *Stearns & Co.*, 50 Cal. 3d 1118, 1129 (1990). The proposed FAC contains no allegations that
 28

1 there has been any actual disruption to Epic’s (unspecified) obligations under the EULAs—let
 2 alone a breach of those obligations. *See* FAC ¶¶ 213–17 (failing to specify any provision of the
 3 EULAs was breached or disrupted). Nor are there, nor could there be, any allegations that
 4 consumers’ performance under the EULAs is disrupted or that consumers breached. This dooms
 5 any claim for tortious interference with contractual relationships. *See Centerline Hous. P’ship v.*
 6 *Palm Cmtys.*, 2022 WL 247951, at *9 (C.D. Cal. Jan. 12, 2022) (dismissing claim because there
 7 was no breach or disruption); *Nationstar Mortg. LLC v. Presley*, 2022 WL 1616546, at *5 (E.D.
 8 Cal. May 19, 2022) (“Nowhere in the FAC does Nationstar allege that actual breach or disruption
 9 of any contract between Nationstar and a third party occurred.”).

10 Instead, Epic alleges that it has “lost . . . revenue from in-app sales it could make to users
 11 who attempted to download the Epic Games Store or an app therefrom on their Android device,
 12 but failed to complete the process due to Unknown Sources install flow.” FAC ¶ 216. But the
 13 proposed FAC nowhere explains how users allegedly failing to download the app or the
 14 purportedly “lost” revenue from this rises to the level of a disruption or breach of the EULAs, and
 15 under controlling California law it does not. *Rincon Band of Luiseno Mission Indians v. Flynt*, 70
 16 Cal. App. 5th 1059 (2021), is instructive. In that case, an American Indian tribe with an exclusive
 17 contract to offer casino games alleged that operators of other gambling establishments tortiously
 18 interfered with that exclusive contract because the tribe had to pay higher costs “for public
 19 assistance programs and other community economic offsets” caused by defendants’
 20 establishments. *Id.* at 1111. The court dismissed the claim, reasoning that “diverted revenue” was
 21 “not an actual breach or disruption of the [tribe’s] performance under the gaming compact.” *Id.*
 22 Like in *Rincon*, the proposed FAC does “not explain how those costs are in any way related to
 23 [Epic’s] performance” under the contract. *Id.*

24 Because Epic has failed to allege any actual breach or interference with the EULAs, Epic
 25 has not plausibly alleged that it has suffered any particularized damages from resulting Google’s
 26 alleged interference. *See* FAC ¶¶ 213–17 (no allegation that Epic suffered damages specifically
 27 resulting from its alleged breach of the EULAs). A conclusory allegation of “lost revenue,”

1 untethered from any causal link to the alleged breach, is insufficient to state a claim for tortious
 2 interference. *Soil Retention Prods., Inc. v. Brentwood Indus., Inc.*, 521 F. Supp. 3d 929, 960 (S.D.
 3 Cal. 2021) (dismissing tortious interference claim where plaintiff alleged it suffered “lost profits,
 4 lost sales, and lost opportunity costs”; “such conclusory, threadbare recitals of the elements” fail
 5 to adequately allege “facts describing Plaintiff’s damages”). To the extent Epic contends that it
 6 has suffered damages in the form of the purported “lost revenue” from the terminated downloads
 7 of the Epic Games Store or other apps, it has failed to even explain how that lost revenue flows
 8 from purported breach or disruption of the EULAs. *See* FAC ¶ 216.

9 **II. The Proposed Amended Complaint Fails To State A Claim For Tortious Interference
 10 With Prospective Economic Relationships**

11 Epic’s proposed claims for tortious interference with prospective economic relations—
 12 with consumers (proposed Count 12) and with developers (proposed Count 14)—fail to allege
 13 sufficient facts to state a claim for similar reasons. Leave to amend to add these claims should be
 14 denied as futile.

15 To state this claim, Epic must plausibly allege “(1) an economic relationship between the
 16 plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2)
 17 the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant
 18 designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic
 19 harm to the plaintiff proximately caused by the acts of the defendant.” *Honey Bum, LLC v.
 20 Fashion Nova, Inc.*, 63 F.4th 813, 824 (9th Cir. 2023). Further, a plaintiff “must plead facts
 21 showing that the defendant engaged in conduct that was wrongful by some legal measure other
 22 than the fact of interference itself.” *Peak Health Ctr. v. Dorfman*, 2019 WL 5893188, at *5 (N.D.
 23 Cal. Nov. 12, 2019). Courts also require a plaintiff to show causation by pleading facts
 24 demonstrating it is “reasonably probable that the prospective economic advantage would have
 25 been realized but for defendant’s interference.” *Id.*

1 A. **Epic Cannot Allege Google's Knowledge Of Any Cognizable Economic
2 Relationship With A Third Party.**

3 The proposed FAC fails to allege a cognizable economic relationship with a third party.
4 Because tortious interference with prospective economic advantage “protects the expectation that
5 the relationship eventually will yield the desired benefit, not necessarily the more speculative
6 expectation that a potentially beneficial relationship will eventually arise,” courts require a plaintiff
7 to allege interference with “*existing* noncontractual relations.” *Westside Ctr. Assocs. v. Safeway*
8 *Stores 23, Inc.*, 42 Cal. App. 4th 507, 524 (1996). Moreover, the alleged interference must be with
9 a “*specific and identifiable*” counterparty. *Reudy v. Clear Channel Outdoors, Inc.*, 693 F. Supp.
10 2d 1091, 1123 (N.D. Cal. 2010); *see also Brown v. Allstate Ins. Co.*, 17 F. Supp. 2d 1134, 1139
11 (S.D. Cal. 1998) (“Plaintiff must establish an actual economic relationship or a protected
12 expectancy with a third person, not merely a hope of future transactions.”).

13 Epic does not identify a *single* consumer or developer with whom it had an existing
14 business relationship, and who abandoned that relationship due to the Unknown Sources
15 installation flow. *See, e.g.*, FAC ¶¶ 151–52. Courts routinely dismiss tortious interference claims
16 based on “general allegations of loss of business opportunities with unidentified existing and
17 potential” categories of persons, such as “clients” or “customers.” *Peak Health Ctr.*, 2019 WL
18 5893188, at *6; *see also Westside Ctr. Assocs.*, 42 Cal. App. 4th at 523–28 (rejecting claim alleging
19 tortious interference with “the class of all potential buyers for plaintiff’s property”); *Rosen v. Uber*
20 *Techs., Inc.*, 164 F. Supp. 3d 1165, 1178–79 (N.D. Cal. 2016) (dismissing tortious interference
21 claim predicated upon taxi driver plaintiffs’ loss of unidentified passengers business due to Uber’s
22 alleged “fraudulent statements”); *Janda v. Madera Cnty. Hosp.*, 16 F. Supp. 2d 1181, 1189–90
23 (E.D. Cal. 1998) (dismissing tortious interference claim where the physician plaintiff alleged an
24 “economic relationship with his existing patients and potential patients” but failed to “specify the
25 identities of the alleged patients”); *Prostar Wireless Grp., LLC v. Domino’s Pizza, Inc.*, 360 F.
26 Supp. 3d 994, 1016–17 (N.D. Cal. 2018) (rejecting tortious interference claim predicated upon
27 “lumping together allegations regarding the undifferentiated group of 11,000 Domino’s stores
28 worldwide”).

1 *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303 (N.D. Cal. 1997), is on
 2 all fours. There, the plaintiff alleged that the defendant’s “commercially disparaging statements
 3 about [plaintiff’s] technical abilities” “caused customers and potential customers not to purchase
 4 video game software” from the plaintiff and “caused other software publishers and distributors not
 5 to deal with” the plaintiff. *Id.* at 1307, 1312. The court dismissed the claim because plaintiff did
 6 not allege that it “was in the midst of negotiations” with any specific third party who then “pulled
 7 out of the negotiations.” *Id.* at 1312. Likewise here, Epic alleges only that the “frictions and scare
 8 screens . . . deter developers from contracting with Epic” and “discourage existing and prospective
 9 customers from downloading the Epic Games Store on Android, as well as Epic apps and third-
 10 party apps offered on the Epic Games Store.” FAC ¶¶ 151–52. These allegations are materially
 11 indistinguishable from those deemed insufficient in *Silicon Knights*.

12 As a result, the proposed FAC does not and cannot allege that Google had knowledge of
 13 any cognizable prospective economic relationship between Epic and its would-be developers and
 14 consumers. In *Trindade*, the court dismissed the claim because the plaintiff failed to allege the
 15 defendant “had knowledge of any specific relationships” with which the defendant interfered.
 16 2013 WL 3977034, at *16–*17. Instead, the plaintiff alleged only “generalized knowledge” of the
 17 plaintiff’s business and relationships with publishers. *Id.* at *17. Similarly here, Epic alleges only
 18 that “Google knows of these prospective economic relationships between Epic and . . . consumers”
 19 and that “Google knew or should have known of the perspective economic relationships between
 20 Epic and these developers.” FAC ¶¶ 226, 239. This is not sufficient. The purpose of the specific
 21 knowledge requirement is to “restrict the class of plaintiffs that can state a claim for this tort,”
 22 *Trindade*, 2013 WL 3977034 at *17, and permitting a claim to proceed based only such generalized
 23 knowledge allegations would impermissibly expand the scope of this tort simply because industry
 24 participants have generalized knowledge of other industry participants’ business.

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1 **B. Epic Does Not And Cannot Allege That Google Intended To, And Succeeded
2 In, Actually Disrupting Any Cognizable Economic Relationship**

3 Epic fails to allege any facts showing that Google either intended to disrupt, or succeeded
4 in disrupting, any economic relationship. To allege intentional disruption, Epic must plead facts
5 showing that Google “knew that the interference was certain or substantially certain to occur as a
6 result of [its] action.” *Quelimane Co. v. Stewart Title Guar. Co.*, 19 Cal. 4th 26, 56 (1998) (quoting
7 Restatement (Second) of Torts § 766 cmt. j).

8 Epic’s own case cited in the proposed FAC (¶¶ 224, 237), *name.space, Inc. v. Internet*
9 *Corp. for Assigned Names & Numbers*, shows why Epic fails to allege intentional disruption. In
10 that case, the district court dismissed plaintiff’s tortious interference claims, holding the complaint
11 failed “to allege any intentional actions undertaken by [defendant] **designed to disrupt** the
12 relationship Plaintiff had with its clients.” 2013 WL 2151478, at *8 (C.D. Cal. Mar. 4, 2013). The
13 Ninth Circuit affirmed the dismissal, noting that the plaintiff “does not allege any facts plausibly
14 suggesting” the complained-of activities on the part of the defendant were undertaken “with the
15 intent to breach or disrupt any existing contracts or prospective economic relationships.” 795 F.3d
16 1124, 1134 (2015); *see also Trindade*, 2013 WL 3977034, at *15–16 (because the plaintiff had no
17 knowledge of the specific contract or relationship, the intent element necessarily failed). Epic
18 similarly makes no allegations that Unknown Sources was “designed to disrupt” its prospective
19 economic relationships. As explained above, Unknown Sources is a decade-old security feature
20 that applies to *all* direct downloading. *Supra* Section I.A; FAC ¶¶ 65, 67–68. Epic does not allege
21 that Google altered Unknown Sources in any way in response to the Epic Games Store’s launch
22 on Android. Epic’s conclusory allegations are unpersuasive as to how the Unknown Sources
23 feature could plausibly be “designed to disrupt” its prospective economic relationships.

24 Nor does Epic allege any facts showing actual disruption resulted from Google’s conduct.
25 As with its tortious interference with contract claim, Epic has only alleged that users abandoned
26 downloading its apps, *see* FAC ¶¶ 216, 227, 241, but courts dismiss tortious interference claims
27 where a plaintiff merely alleges a disruption to “its ongoing business and economic relationships

1 with customers” and not “that it lost a contract nor that a negotiation with a customer failed.”
 2 *Sybersound Recs., Inc. v. UAV Corp.*, 517 F.3d 1137, 1151 (9th Cir. 2008). And Epic’s allegations
 3 that Google’s Unknown Sources install flow has caused Epic to lose sales or business with
 4 developers “asserts the type of speculative economic relationship disapproved of” by California
 5 courts. *Silicon Knights*, 983 F. Supp. at 1312 (dismissing claim generally alleging that
 6 misrepresentations induced distributors not to deal with plaintiffs, without providing facts alleging
 7 an actual disruption to negotiations or potential contracts).

8 C. Epic Cannot Allege Damages With Reasonable Certainty

9 Because Epic has failed to plead a cognizable economic relationship, Epic also has failed
 10 to allege facts sufficient to demonstrate economic harm caused by Google’s actions. Epic alleges
 11 that the Unknown Sources flow makes the Epic Games Store “less attractive” to prospective app
 12 developers and consumers, FAC ¶¶ 138, 152, thus leading to “lost revenue” from app and in-app
 13 sales, *id.* ¶¶ 216, 242. But this “assumes what normally must be proved, *i.e.*, that it is reasonably
 14 probable the plaintiff would have received the expected benefit had it not been for the defendant’s
 15 interference.” *Westside Ctr. Assocs.*, 42 Cal. App. 4th at 523. “The need to prove damages with
 16 reasonable certainty” is “interrelated” with “the need to prove interference with a particular
 17 relationship” and requires, for this claim, a plaintiff to plead sufficient facts showing that its alleged
 18 damages are not speculative. *Id.* at 520, 522.

19 Epic makes no attempt to quantify or even identify the losses it purportedly experienced
 20 due to the Unknown Sources install flow’s impact on its relationships with consumers or
 21 developers. Epic instead alleges that it has and will lose revenue “from sales of and within apps
 22 that would have been distributed on the Epic Games Store but for Google’s conduct.” FAC ¶ 242.
 23 Epic further alleges that developers “are deterred by the threat that any distribution from the Epic
 24 Games Store would again become subject to significant frictions once the [Epic v. Google]
 25 injunction expires,” ***three years*** from now. *Id.* ¶ 87. Epic thus attempts to plead damages in the
 26 form of *unspecified* monetary damages for *unidentified* apps with *unknown* audiences and
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1 uncertain revenue-generation capabilities, all based on abstract actions that may or may not occur
 2 in three years. These are the kind of speculative harms that fail to state a claim.

3 **III. The Proposed First Amended Complaint Fails To State A Claim For Trade Libel.**

4 Epic’s proposed trade libel claim also fails to state a claim because Epic does not
 5 sufficiently allege any false statement about Epic. *See* FAC ¶¶ 199–203. Leave to amend to add
 6 these claims should be denied as futile.⁴

7 To state a claim for trade libel, Epic must allege sufficient facts plausibly showing that “(1)
 8 the defendant published a statement that tended to disparage the plaintiff’s product or property; (2)
 9 the statement was provably false; (3) the defendant either knew the statement was false or acted
 10 with reckless disregard for its falsity; and (4) the statement caused actual pecuniary damage.” *ZF*
 11 *Micro Sols., Inc. v. TAT Cap. Partners, Ltd.*, 82 Cal. App. 5th 992, 1002 n.5 (2022).

12 **First**, Epic fails to allege that Google’s Unknown Sources install flow makes *any* statement
 13 about Epic, let alone one that disparages Epic. Epic concedes that the allegedly libelous statements
 14 in the Unknown Sources install flow occur when a user attempts to “download a third-party store
 15 from the web” and “when the user wishes to download an app from that store,” and are not specific
 16 to the Epic Games Store or to Epic. FAC ¶ 67. Courts routinely hold that where “the statement
 17 that is alleged to be injuriously false concerns a group”—here, any third-party store or app from
 18 third-party stores—“plaintiffs cannot show that the statements were ‘of and concerning them.’”
 19 *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1046 (1986) (collecting cases).

20 **Second**, Epic fails to adequately allege any false statement, thus failing to adequately allege
 21 the second or third elements. Epic contends that the disclosures in the Unknown Sources install
 22 flow—that downloads of the Epic Games Store and downloads of apps through the Epic Games
 23 Store are “unknown apps” that “might be harmful”—are false and “misleading” because “Google
 24 is familiar with Epic’s apps and knows they are safe.” FAC ¶¶ 68–69, 201. Epic fails to allege

26 ⁴ This claim is largely identical to a claim Epic brought against Samsung in its September 30, 2024
 27 original Complaint. While the court denied Samsung’s motion to dismiss this claim, Google
 28 nevertheless urges the Court to deny leave to amend to include this claim for the reasons explained
 herein.

sufficient facts demonstrating that Google was “familiar” with all third-party apps available on the Epic Game Store, let alone that Google “knows” that all those apps are “safe.”

3 *Third*, Epic fails to adequately allege that Google’s statements “caused actual pecuniary
4 damage.” *ZF Micro Sols.*, 82 Cal. App. 5th at 1002 n.5. The proposed FAC identifies no particular
5 customers or developers who were “dissuaded” by Google’s statements, let alone adequately allege
6 how that impact led to Epic incurring actual “pecuniary damages.” FAC ¶¶ 138, 200. Instead,
7 Epic alleges only that Google’s statements “lead to identifiable instances of users abandoning the
8 installation of Epic apps, resulting in loss of profits that would have resulted from purchases made
9 by those users.” *Id.* ¶ 202. But this allegation fails because it does not causally link between
10 Google’s alleged statements and Epic’s supposed actual pecuniary damage. *Am. Shooting Ctr., Inc. v. Secfor Int’l.*, 2015 WL 1914924, at *7 (S.D. Cal. Apr. 7, 2015) (dismissing trade libel claim
11 where plaintiff failed to “allege facts showing that it suffered pecuniary damage” because it was
12 “unclear” if the audience for the alleged injurious statement “was a potential customer and if so,
13 whether [plaintiff] lost [its] business as a result of what [defendant] said”). Epic does not even
14 “identify particular customers and transactions of which it was deprived as a result of the libel.”
15 *Mann v. Quality Old Time Serv., Inc.*, 120 Cal. App. 4th 90, 109 (2004); *see also RingCentral, Inc. v. Nextiva, Inc.*, 2020 WL 978667, at *4 (N.D. Cal. Feb. 28, 2020) (dismissing trade libel
16 claim for failure to “allege specific facts explaining the pecuniary damages plaintiff suffered as a
17 result of the allegedly libelous statement”); *First Advantage Background Servs. Corp. v. Private Eyes, Inc.*, 569 F. Supp. 2d 929, 937 (N.D. Cal. 2008) (dismissing trade libel claim when plaintiff
18 failed to “allege the amount of business it had prior to the defendant allegedly making these
19 statements, how much it had after, or the value of the business”).
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CONCLUSION

24 For the foregoing reasons, Google respectfully requests the Court deny Epic's motion for
25 leave to amend its complaint and file the proposed FAC.

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Respectfully submitted,

2 /s/ Martha L. Goodman
3 Martha L. Goodman

4 PAUL, WEISS, RIFKIND, WHARTON
5 & GARRISON LLP
6 2001 K Street, NW
7 Washington, DC 20006-1047
Telephone: (202) 223-7300
Facsimile (202) 223-7420
mgoodman@paulweiss.com

8 Karen L. Dunn (*pro hac vice* pending)
9 Jeannie S. Rhee (*pro hac vice*)
Jessica E. Phillips (*pro hac vice*)
10 DUNN ISAACSON RHEE LLP
401 Ninth Street, NW
Washington, DC 20004
Telephone: (202) 240-2900
kdunn@dirllp.com
jrhee@dirllp.com
jphillips@dirllp.com

11
12
13 Meredith R. Dearborn (SBN 268312)
PAUL, WEISS, RIFKIND, WHARTON
14 & GARRISON LLP
15 535 Mission Street, 24th Floor
San Francisco, California
16 Telephone: (202) 223-7323
Facsimile (202) 330-5908
mdearborn@paulweiss.com

17 *Counsel for Defendant Google LLC*